BOOK REVIEWS


Professor Malcolm P. Sharp has performed a great public service by his book Was Justice Done? which examines the Rosenberg-Sobell case from the point of view of the evidence presented and its credibility or the reverse. The case is one of those arousing such strong passions on the one side or on the other that few people have the intellectual self-control required for a calm appraisal. Professor Sharp has this self-control. He is not and has never been a Communist. He is a man trained in the estimation of evidence and in the legal relevance of facts. He was concerned in the last stages of the Rosenberg case, but only because, as a lawyer, he came to the conclusion that justice was not being done. Like most people, he had been inclined to accept the verdict of the Court, and it was reluctantly that he was compelled to change this opinion. I have not found in his book any evidence of bias on his part. So far as I am able to judge, he gives due weight to all the evidence that was offered; and when he rejects or questions any piece of evidence, he does so either on grounds of internal inconsistency or because the witness concerned had powerful motives for departing from the truth. His book is as admirable in form as it is in substance, and in both respects deserves the highest praise.

It may be thought an impertinence for one who is not an American to find fault with a decision of the American Courts. As to this, I should wish to say that every country, and indeed every social group, is liable, from time to time, to an attack of mass hysteria. England had such an attack at the time of the Popish Plot and was on the verge of it in the early months of 1918. France had two very fierce attacks of mass hysteria, the first in 1793, and the second at the time of the Dreyfus case, but, at the end of the second, recovered sanity and brought Dreyfus back from Devil's Island. The Rosenbergs cannot be brought back.

Such attacks are apt to occur whenever a community is exposed to intense fear, and are apt to take completely irrational forms, as, for example, when the Japanese punished Koreans for the Tokyo earthquake. Mass hysteria is one of the most disastrous of human propensities and, unfortunately, it is not confined to this or that nation. In regretting and combating any one of its manifestations, it is important to remember that no one nation is specially prone to this form of irrational behaviour.

In reading Professor Sharp's record, if one is not caught in the web of terror
that enmeshed police and judge and jury and witnesses, all alike, the inability of the participants to form calm judgments is quite undeniable. It seems to be an accepted maxim that a known perjurer is always to be believed if he says what the police wish him to say; but if he says anything else, one may remember his addiction to perjury. It seems to be also an accepted maxim that, if a man known to have committed a crime makes a statement, after having been told by the police that if he makes it he will escape punishment or have a light sentence, what he says, under the influence of such pressure, is bound to be gospel truth. When, on the other hand, the Rosenbergs, down to the very day of their execution, were told that their lives would be spared if they would incriminate others, and when they totally refused to do so, this is not regarded as evidence of courageous innocence, but as a shocking example of Communist cunning.

The conviction of the Rosenbergs depended mainly upon the evidence of the Greenglasses. Greenglass was Mrs. Rosenberg’s brother and modelled his conduct upon that of Cain. As one critic quoted by Professor Sharp justly states: “The story of David Greenglass is so obviously false in so many material respects that he is entitled to no credence; a dog should not be put to death upon the strength of his testimony” (p. 94).¹ If his testimony is accepted, he was as liable to the death penalty as the Rosenbergs were; but in view of his denunciation of them, he received only a fifteen-year sentence and Mrs. Greenglass was not indicted. Professor Sharp deals at length, and very convincingly, with the console table which derived its importance from the fact that it throws doubt upon the Greenglasses’ veracity and from the circumstance that new facts about it were discovered shortly before the Rosenbergs’ execution and were made the basis of an application for a new trial. This application was hastily rejected on frivolous grounds after the judge had refused to see the console table which the defence asserted to be the one in question.

Judge Kaufman injected prejudice into the proceedings by attributing to the Rosenbergs all the misfortunes of the Korean War. He seems to have thought, as most non-scientific Americans apparently did, that there was something which could be called the “secret” of the bomb, which was thought of as analogous to a magic formula in medieval necromancy. He led the jury to believe that the Rosenbergs had given this “secret” to the Russians and had thereby emboldened them to cause the North Korean invasion of South Korea. This whole conception is quite wide of the mark. There was very much less that was secret about the atom bomb after Hiroshima than was popularly supposed.

There are curious inconsistencies, which do not seem to have struck those who were concerned in the trial. For example, witnesses stated with great emphasis that a Communist spy in telephoning would seldom give his real name, but would substitute a code name that had been assigned to him. Nevertheless,

¹ Quoting Mr. Stephen A. Love, of the Chicago Bar, in a speech of May 3, 1953.
great play is made with the assertion that somebody who telephoned gave his name as "Julius," and therefore must have been Rosenberg.

The evidence against Sobell, who got a thirty-year sentence, was even more flimsy than the evidence against the Rosenbergs. Judge Kaufman directed the jury that, if they did not believe the testimony of Elitcher, they must acquit Sobell. Elitcher had stated on oath that he had never been a Communist, which the police knew to be false. He therefore knew himself to be liable to prosecution for perjury. He denounced Sobell, who had been his best friend, and he has never been prosecuted.

It is commonly alleged by those who consider that the guilt of the Rosenbergs and Sobell was established that the case was reviewed by the Supreme Court. This is not so. The Supreme Court was asked to review the case, but refused.

Apart from the question whether the verdicts were right, there is something utterly horrifying about the indecent haste shown by all the authorities in the last stages of the case. The application for a new trial on the basis of new evidence was rejected before there had been time to examine the new evidence. Legal proceedings did not terminate until two o'clock on June 19, 1953. An appeal to the President for clemency cannot be made until the legal proceedings are concluded. Counsel for the Rosenbergs endeavoured to place an appeal for clemency before the President. They met with every kind of obstacle from red tape and do not know to this day what final consideration was given to the case by the President. The execution had been fixed for eleven p.m. on that same day, but when it was pointed out that this would be on the Jewish Sabbath, the time of execution was advanced to be just before sunset on that same day. Up to the last moment, the Rosenbergs knew that they could escape the death penalty by breaking the Ninth Commandment. They refused, and died. Those who had not refused, survived.

Sobell, unlike the Rosenbergs, though he refused to bear false witness, is still alive and can still be helped. He is in Alcatraz prison, which is supposed to be for recalcitrant criminals, though the only way in which he has shown himself recalcitrant is in his refusal to denounce others as his accomplices in the crimes which he has not committed. It may still be hoped that there are enough people in the United States who hold that a man should not be punished for a crime unless there is convincing evidence that he has committed it, to secure by means of agitation that Sobell is granted a new trial. I cannot believe that in the somewhat calmer atmosphere of the present time he would again be convicted.

Professor Urey contributes to the book an introduction which is valuable not only because of the scientific accuracy of his judgment but also because, as a distinguished nuclear physicist, he is in a better position than most others to judge as to what was possible in the way of espionage. He deserves very high praise as one of the first non-Communists to question the justice of the verdicts.

The miscarriage of justice, as I firmly believe it to have been, in the Rosen-
The Berg-Sobell case is analogous to such cases as the Sacco-Vanzetti case and, as I remarked before, the Dreyfus case. One is driven to ask: is there anything that can be done to prevent innocent people from unjustly suffering in times of national excitement? At such times, judge and jury, alike, are incapable of calm judgment. The crimes alleged are so heinous that some of the horror of the crime spills over on the accused before he has been proved guilty. Witnesses who take the unpopular side incur odium and are liable to be dismissed from their employment; whereas those who take the popular side are acclaimed as heroes. The case of Matusow is interesting in this connection. By his own account, he hired himself out to commit perjury for money. But after a time he repented and said that he had been guilty of perjury. As soon as repentance led him to give up perjury, he was prosecuted for perjury. People who have been Communists and have ceased to be so have a lucrative and popular career before them if they are willing to invent stories that the police like to hear; but, if not, they suffer all the disabilities to which ordinary ex-Communists are exposed.

I am not a lawyer and I do not know on what principles lawyers decide as to the credibility of witnesses; but from the point of view of common sense, it seems to me that if a man who is known to have committed perjury will derive great advantages if he says A and suffer severe penalties if he says B, one cannot feel quite sure that he is speaking the truth when he says A. And, speaking still from a layman's point of view, I should have thought that, if you are not quite sure, you ought not to inflict the death penalty. It is commonly said by those who derive comfort from soothing platitudes that it is better that ninety-nine guilty men should escape than that one innocent man should be punished. More or less inadvertently, we have allowed our institutions to develop so as to favour the exact opposite of this result. To prove guilt, we have a vast public machine of policemen and detectives and public prosecutors, all supported by public money; whereas the proof of innocence is left to private people at their own expense and without any of the facilities that belong to the police. People have not realized adequately that what happens in court has required long preparation and great skill in deciding how to present the material. All this preparatory work is arranged on the assumption that the public has an interest in proving guilt but not in proving innocence.

It is customary among Western nations to speak with horror of the Police State, quoting the two awful examples of Nazi Germany and Soviet Russia. The examples are truly awful. When the Russians were engaged in acquiring power over the countries that became satellites, it was always the control of the police that they sought first. We do not wish the police forces in our countries to have the kind of power that they have in Communist countries, but I think we are not always sufficiently careful to avoid steps in that direction. It is not the business of the police to insure justice. That is, or should be, the business of the courts. It is the business of the police to secure convictions, and, unless
their virtue is almost superhuman, they will not invariably be careful to insure that it is only against the guilty that they seek convictions. A state of affairs easily arises where those who belong to some unpopular party or who for some reason are opposed to the government come to feel terror in the thought that the police may at any moment accuse them of some crime and, even if they are lucky enough to be acquitted, they probably suffer financial ruin owing to the suspicion which has fallen upon them. Where this happens, there is no true freedom; and it is pretty sure to happen wherever police power is unchecked. The police in Western nations have not shown themselves very adept at catching genuine political offenders. When there were bomb outrages at the end of the First World War, none of the perpetrators were caught, but two innocent men were put to death and another innocent man, after being sentenced to death, had his punishment commuted to penal servitude for life. This caused the ignorant public to believe in the efficiency of the police. Professor Sharp's book deals with a more recent example of the same pattern. I hope it may awaken the public to the realization that to be accused is not necessarily to be guilty.

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Not very long ago, Charles A. Beard's An Economic Interpretation of the Constitution, conceived as an antidote to piety, was itself made sacrosanct by historians. Like all books that rouse and disturb, it met at first with professional hostility; however, unlike most of its kind, it gained professional approval, not from direct confirmation, but from its congruence with prevailing social theories and numerous complementary studies. Beard's main idea—that the Constitution was an economic document put over by economic groups—came into fashion with the larger assumption that the law is a way of defining the property relations of society, and that men seek to rationalize their interests and pursue their interests rationally. Beard's second thesis—that the Constitution was designed to check democracy and was ratified against the wishes of the majority—was in line with studies of that period that showed society rent by class antagonisms (Carl L. Becker), democracy unleashed by revolution (J. F. Jameson), conservatism once again resurgent in the fight for control of the states (Allan Nevins). Beard's own scholarship, however, escaped close scrutiny: it was too massive and seemingly too meticulous to invite a thorough reauditing. When Beard issued a new edition of his work in 1935, twenty-two years after the first printing, he could say that nothing in the interval had happened to make him alter or reinterpret his facts.

Alas! historiography will not admit such a thing as a permanently immune